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8 Attorneys for Defendants and Counterclaimants Wingpow
International Ltd., Gary Ayckbourn and Mark Ayckbourn
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10 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

11 Line One Laboratories Inc. (USA), a
12 California corporation,

13 Plaintiff,

14 v.

15 Wingpow International Limited, a private
16 limited company organized in the United
Kingdom; Gary Ayckbourn, an individual;
17 Mark James Ayckbourn, an individual;
and DOES 1-10, inclusive,
18

Defendants.
19

20 And related counterclaims.
21

Case No. 2:22-cv-02401-RAO

22 **COUNTERCLAIMANTS' EX
PARTE APPLICATION TO
AMEND BRIEFING SCHEDULE
ON MOTION FOR NEW TRIAL**

23 [Declaration of Jeffrey N. Williams filed
concurrently herewith; Proposed Order
lodged concurrently herewith]

24 Hon. Rozella A. Oliver

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1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that Counterclaimants Wingpow International
3 Limited, Gary Ayckbourn, and Mark Ayckbourn (“Counterclaimants”) hereby apply *ex*
4 *parte* to amend the briefing schedule on the motion for new trial filed by Counterclaim
5 Defendants Line One Laboratories LLC f/k/a Line One Laboratories Inc. (USA),
6 American Latex LLC f/k/a American Latex Corp., and Calvin Spencer Lee a/k/a
7 Budiman Lee (“Counterclaim Defendants”). Dkt. 306.

8 The instant Application is made on the ground that the undersigned counsel
9 mistakenly calendared the opposition deadline on the motion for new trial at June 11,
10 2025 (the usual twenty-one days before the motion hearing) rather than May 27, 2025
11 (ten days after service of the motion). Counterclaimants should be permitted the
12 opportunity to file an opposition to the motion for new trial notwithstanding counsel’s
13 good faith mistake.

14 Pursuant to Local Rule 7-19, Counterclaimants provided e-mail notice of the
15 foregoing to all parties in this case on May 28, 2025, approximately twenty minutes
16 after the filing of Counterclaim Defendants’ notice of non-opposition (Dkt. 318).
17 Williams Decl. ¶ 7, Ex. 1. Counterclaimants also attempted to reach Counterclaim
18 Defendants by phone unsuccessfully. *Id.*

19 Counsel of record for Counterclaim Defendants include:

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1 This Motion is supported by the attached Memorandum of Points and
2 Authorities; the concurrently-filed Declaration of Jeffrey N. Williams; and the
3 complete files and records in this action and such other matters as the Court may allow.
4

5 Dated: May 28, 2025

WARGO, FRENCH & SINGER LLP

6 By: /s/ Jeff Williams

7 DAVID M. PERNINI

8 JEFFREY N. WILLIAMS

9 BRANDON R. PARRISH

10 Attorneys for Defendants and Counterclaimants
11 Wingpow International Ltd., Gary Ayckbourn and
12 Mark Ayckbourn

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On November 4, 2024, a jury in this action issued a verdict of \$8.4 million in
3 favor of Counterclaimants and against Counterclaim Defendants. Dkt. 251. Substantial
4 post-verdict litigation followed. Approximately five months after the verdict issued,
5 on April 18, 2025, the Court issued a slightly-reduced judgment against Counterclaim
6 Defendants in the amount of \$6.9 million. Dkt. 303.

7 On May 16, 2025, Counterclaim Defendants filed three post-judgment motions:
8 (i) a motion to amend the judgment (Dkt. 305); (ii) a motion for new trial (Dkt. 306);
9 and (iii) a motion for judgment as a matter of law (Dkt. 307). Prior to filing, the parties
10 conferred, and Counterclaimants advised Counterclaim Defendants that they intended
11 to oppose all three motions. Counterclaim Defendants set all three motions for hearing
12 on July 2, 2025. Williams Decl., ¶ 2.

13 Counterclaimants reviewed the three post-judgment motions and calendared an
14 opposition deadline of June 11, 2025, twenty-one days before the hearing on July 2,
15 2025. Williams Decl., ¶ 3. This was the correct deadline for the motion to amend
16 judgment and the motion for judgment as a matter of law, but was the incorrect deadline
17 for the motion for new trial, which actually fell on May 27, 2025. *See L.R. 7-9* (motion
18 oppositions due “not later than ten (10) days after service of the motion in the instance
19 of a new trial motion and not later than twenty-one (21) days before the date designated
20 for the hearing of the motion in all other instances”). Counterclaimants were not alerted
21 to the mistake until reviewing Counterclaim Defendants’ notice of non-opposition to
22 the motion for new trial, which they filed May 28, 2025 at 3:32pm. Williams Decl., ¶
23 4. Counterclaimants e-mailed Counterclaim Defendants twenty minutes later to request
24 that Counterclaim Defendants stipulate to an amendment of the briefing schedule or
25 extension of time for Counterclaimants to oppose the motion for new trial. Williams
26 Decl., ¶ 5, Ex. 1. As of the time of this filing—and despite Counterclaim Defendants
27 having only just filed the notice of non-opposition—Counterclaim Defendants have not
28 responded. Williams Decl., ¶ 6.

1 Courts in this Circuit routinely provide relief from deadlines missed as a result
2 of excusable neglect, and the Ninth Circuit has specifically disapproved of district court
3 orders concluding that “a calendaring mistake is the type of ‘inadvertent mistake’ that
4 is not entitled to relief pursuant to Rule 60(b)(1).” *Ahanchian v. Xenon Pictures, Inc.*,
5 624 F.3d 1253, 1262 (9th Cir. 2010); *see also* Fed. R. Civ. P. 60(b) (“On motion and
6 just terms, the court may relieve a party or its legal representative from a final judgment,
7 order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or
8 excusable neglect.”).¹ Indeed, in *Ahanchian*, the Ninth Circuit held that it was
9 reversible error to deny a party’s motion for an extension from a missed deadline,
10 finding that: (i) the risk of prejudice to the non-moving party was low; (ii) the length of
11 the resulting delay was relatively short; (iii) missing a deadline established by local rule
12 constituted excusable neglect; and (iv) there was no indication that the moving party
13 was motivated by bad faith.

14 Counterclaimants therefore respectfully request leave from the May 27, 2025
15 deadline to oppose the motion for a new trial, and for the briefing schedule to be
16 amended so that the opposition deadline aligns with the opposition deadlines for the
17 other two motions Counterclaim Defendants filed the same day: June 11, 2025. As in
18 *Ahanchian*, there is a low risk of prejudice to Counterclaim Defendants, who still would
19 have their motion heard on its merits; the extension would not result in any delay of a
20 hearing or other deadline but only move Counterclaimants’ opposition a mere fifteen
21 days into the future; the excusable neglect in this case resulted from the fact that counsel
22 inadvertently did not take note that L.R. 7-9 treats new trial motions differently than all
23 other motions; and there is no suggestion of bad faith by Counterclaimants. To the
24 contrary, Counterclaimants immediately sought to confer with Counterclaim
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27 ¹ While the Court has not yet entered any order in this case to which Rule 60 might
28 apply, Counterclaimants prospectively seek relief from any such order via this
Application, which only demonstrates Counterclaimants’ diligence.

1 Defendants, but received no response despite that Counterclaim Defendants had filed
2 the notice of non-opposition only minutes earlier.

3 Counterclaimants therefore respectfully request that the Court amend the
4 briefing schedule to permit their opposition to the new trial on or by June 11, 2025.

5 Dated: May 28, 2025

WARGO, FRENCH & SINGER LLP

6 By: /s/ Jeff Williams

7 DAVID M. PERNINI

8 JEFFREY N. WILLIAMS

9 BRANDON R. PARRISH

10 Attorneys for Defendants/Counterclaimants
11 Wingpow International Ltd., Gary Ayckbourn,
and Mark Ayckbourn

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